

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

JUSTIN STRIPLING,

Plaintiff,

v.

WARDEN TOMPSON, et al.,

Defendants.

Case No.: 7:19-cv-00239-ACA-HNJ

ORDER

The magistrate judge entered a report on March 4, 2020, recommending that the court dismiss all claims in this action without prejudice pursuant to 28 U.S.C. § 1915A(b) for failing to state a claim, except the claims against Defendant Cutts for excessive force and deliberate indifference to Plaintiff Justin Stripling's serious medical needs. (Doc. 18). Mr. Stripling filed objections to the report and recommendation. (Doc. 22).

In his objections, Mr. Stripling argues that the magistrate judge abused his discretion by dismissing the claims against Defendants Tompson and Hudden without first affording him an opportunity to amend his complaint. (Doc. 22 at 1–2). Mr. Stripling claims that had he been given the chance to amend, he would have alleged that: (1) Hudden and Tompson “had personal knowledge (staffing or otherwise) of the December 11, 2017, incident,” (2) Hudden failed to assign security

officers to the plaintiff's dorm on December 11, 2017, and (3) Hudden and Thompson knew the "facility was dra[s]tically short-handed on that shift and had been short for quite a while," but did nothing to correct the problem. (*Id.* at 3-4).

As an initial matter, the magistrate judge did not dismiss the claims against Defendants Thompson and Hudden. Rather, he made a recommendation to the undersigned to dismiss the claims. Furthermore, the magistrate judge did afford Mr. Stripling an opportunity to amend his complaint on June 10, 2019, when he entered an order notifying Mr. Stripling of pleading deficiencies in his original complaint and directing him to correct the deficiencies by filing an amended complaint. (Doc. 15). On July 3, 2019, Mr. Stripling filed an amended complaint (doc. 17), which the magistrate judge examined in his March 4, 2020 report and recommendation (doc. 18). Mr. Stripling identifies no factual or legal error in that report. Therefore, the court **OVERRULES** Mr. Stripling's objections.

In his objections, Mr. Stripling suggests that he may wish to amend his complaint, but he has not filed a motion to amend. Therefore, any request to amend the complaint is not properly before the court. If Mr. Stripling wishes to amend his complaint, **on or before October 5, 2020**, Mr. Stripling must file a motion for leave to amend with a proposed amended complaint attached to the motion.

Having carefully reviewed and considered *de novo* all the materials in the file, including the report and recommendation and Mr. Stripling's objections, the court **ADOPTS** the magistrate judge's report and **ACCEPTS** his recommendation.

The court **ORDERS** that all claims in this action, except the claims against Defendant Cutts for excessive force and deliberate indifference to Mr. Stripling's serious medical needs, are **DISMISSED WITHOUT PREJUDICE**, pursuant to 28 U.S.C. § 1915A(b). The court **REFERS** the claims against Defendant Cutts to the magistrate judge for further proceedings.

DONE and **ORDERED** this September 21, 2020.



ANNEMARIE CARNEY AXON
UNITED STATES DISTRICT JUDGE